
What is to be done when filesharers step over the line online?

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“Law... begins when someone takes to doing something someone else does not like.” Karl Llewellyn.

In the beginning there was just the laws of nature – like gravity – and you defied them at your peril. As man began to make music banging drums and blowing reeds – and being fed for his performance – two other kinds of law evolved. Both were concerned with social order – but the first carried with its elements of morality – notions of good and bad – like murder and theft; the second was entirely morally neutral – like stopping at a red traffic light or driving on the right.

Copyright law was introduced to protect map designers and authors, and later musicians from other people stealing their work – and doing so combines both a moral and pragmatic element. What all man made laws, including copyright, have in common, is that they contain both elements of certainty and elements of discretion:-

1. Legislation – as defined and neatly laid out in statute.
2. Construction – as construed by the courts and as applied in a changing world.
3. Enforcement – to be exercised with discretion; as good law executed badly soon falls into disrepute. (eg getting prosecuted for doing 71mph on a motorway)

In the digital age the single biggest threat to the music industry is without a shadow of a doubt the free reign of serial filesharers. The second biggest threat are those in the music industry who seek to defy these filesharers by adding a silent tongue and a deaf ear to a blind eye. Their silence is not golden it's deafening. While the BPI are making every effort to enforce the laws of copyright with appropriate discretion, those who would otherwise clamour for death to all bootleggers and pirates; covermounts; and to all those who would devalue music – seemingly quiver and shake for fear of the media backlash and its endless drivel of disinformation on anything to do with music; the music business; and the price of CDs.

If the reason that there is embarrassment to enforce the law is that the law needs some changing (which may well be the case with respect to private 'change of format' copying) then let's for everyone's sake move to change it. On the other hand, if it's simply a fear of being criticised then all we are doing is adding to the dinner party cry of 'the music business gets what it deserves.' The next time a fabulously famous rich artist or their representative publicly announce that everyone has the right to help themselves to music online they should immediately lose all rights of copyright to their own work forever, and pay back all the money they ever made from the public which bought it!

If records had never been invented and the only way to ever hear music was on a pay to play basis then neither the true value of music would have been lost, nor the true nature of copyright law which was created to protect it. By enforcement, if necessary.

Any views expressed are personal opinions of John Benedict who appears courtesy of Benedicts, Denton Wilde Sapte and AIM.